Remarks/Arguments

The Office Action mailed September 2, 2008 has been reviewed and carefully considered.

Claims 1-15 are now pending in this application. Claim 1 has been amended to clarify the input buffer threshold based on round trip delay. Support for this amendment may be found in the present specification as published at least at paragraphs 112 and 113. No new matter has been added. Claims

Claims 1, 4, 5, 7, 8, 9-11, 14 and 15 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent Publication No. 2002/0004840 A1 by Harumoto et al. (hereinafter "Harumoto") in view of U.S. Patent No. 5,870,134 to Laubach et al. (hereinafter "Laubach").

Claims 2, 3, 6, 12 and 13 stand rejected under 35 USC §103(a) as being unpatentable over Harumoto in view of Laubach in further view of U.S. Patent Publication No. 2004/0168052 A1 to Clisham et al. (hereinafter "Clisham").

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<u>35 USC §103 Rejection of Claims 1, 4, 5, 7, 8, 9-11, 14 and 15</u>

Claims 1, 4, 5, 7, 8, 9-11, 14 and 15 stand rejected under 35 USC §103(a) as being unpatentable over Harumoto in view Laubach.

Claim 1 recites, *inter alia*, "at least one input buffer having at least one input buffer threshold value related to round trip delay." Thus, the present invention provides for calculation of client buffer thresholds based on awareness of present network conditions (published specification, paragraphs 112 and 113). Moreover, the present invention provides for sending of a test packet by a client, and measuring the time until an acknowledgment is received by the client (published specification, paragraphs 112 and 113). Claims 2, 4, and 8 are amended for language.

No new matter was added in view of these amendments.

Harumoto is directed to a streaming method and system where network capacity is provided by a central host computer (Harumoto Title, paragraph 156). The centralized network

capacity distribution scheme of Harumoto is not responsive to clients of varying bandwidth, or client side network congestion. Specifically, "a terminal determines a target value S_target of stream data to be stored in its buffer *in relation to its buffer capacity and the transmission capacity of the network*," (Abstract, Harumoto).

In contrast, the present invention derives input buffer thresholds based on the client-measured network performance in terms of round trip delay (published specification, paragraphs 112 and 113). Such information is provided to a streaming server which uses this information to segment the data and institute a timing scheme for transmission customized to that client ((published specification, paragraphs 107, 109, 113, and further reflected in the language of Claim 1 "…to transmit to said server via said second network said information, so that said server is able to determine at least one size of successive portions of said required data and at least one delay between two successive sending steps of said portions"). As such, Harumoto does not disclose or suggest at least "at least one input buffer having at least one input buffer threshold value related to round trip delay." Laubach is completely silent with respect to network performance measurements and as such does not cure the defect of Harumoto in this regard.

Additionally, even if all elements of the recited claims were found in the cited references, which they are not, the Examiner argues the rationale to combine Harumoto with Laubach is that, "It would be obvious to a person of the ordinary skilled in the art to modify Harumoto et al. by incorporating a separate and distinct communication network as by Laubach et al. The rationale behind this is modification would be that a person of ordinary skill in the art would be motivated to combine the prior arts to the claimed invention". This rationale is not complete, in that the Examiner has not explained why such a combination should be made. That is, the Examiner cannot argue that the combination is possible, but rather provide a reason why one would be motivated to combine the cited references. [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396.

Accordingly, the abovementioned limitation of Claim 1 is neither disclosed nor rendered obvious by the cited combination. Dependent Claims 4, 5, 7, 8, 9-11, 14 and 15

include further distinctions over the cited combination and are believed to be in condition for allowance due at least to their dependency from Claim 1. Early and favorable reconsideration of the rejection is respectfully requested.

35 USC §103 Rejection of Claims 2, 3, 6, 12 and 13

Claims 2, 3, 6, 12 and 13 stand rejected under 35 USC §103(a) as being unpatentable over Harumoto in view of Laubach in further view of Clisham. Claims 2, 3, 6, 12 and 13 depend directly or indirectly from Claim 1. As such, these claims are believed to be patentable for at least the reasons cited above with respect to Harumoto, as Clisham, like Laubach, fails to cure the defect of Harumoto with regard to the cited limitation. Early and favorable reconsideration of the rejection is respectfully requested.

In view of the foregoing, Applicant respectfully requests that the rejections of the claims set forth in the Office Action of September 2, 2008 be withdrawn, that pending claims 1-15 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

Respectfully submitted,

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